

TIME

Our Nation Is Still Divided Along the Battle Lines of the Civil War



A supporter of US President Donald Trump holds a Confederate flag outside the Senate Chamber during a protest after breaching the US Capitol in Washington, DC, January 6, 2021. - The demonstrators breached security and entered the Capitol as Congress debated the 2020 presidential election Electoral Vote Certification. SAUL LOEB/AFP

BY **JEREMI SURI** MAY 6, 2022 12:52 PM EDT

IDEAS

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orries about a new civil war in the United States are misplaced because the Civil War never fully ended. That is essential knowledge for

understanding current political divisions, especially the recriminations surrounding the leaked draft Supreme Court Roe decision, negating constitutional protections of a woman's abortion rights.

For abortion and many other issues, our nation is still divided largely along the battle lines of the Civil War: one party remains rooted in the old Confederacy; the other draws its energy from the diverse voters in northern and coastal states. Critics of federal power continue to resist protecting voting rights, women's rights, and educational access, while progressive proponents endorse national voting, health, and education standards. White supremacy pervades these divisions—the color of one's skin remains one of the best predictors of which side you are on.

The first opportunity to heal these divisions came after the surrender of the Confederacy in April 1865, but the war weary Union did not make the necessary commitments to change the behaviors, institutions, and beliefs of the South. Responding to pressures from families and businesses in the North, the federal government reduced its military presence in the South, cut back on spending for law enforcement, and began pardoning secessionists and readmitting their states to the Union. The former Confederate states wrote new constitutions beginning in 1868, and they included African-American elected officials for a short time, but they quickly reverted to exclusive white rule with few repercussions from the federal government. Ten years after the surrender at Appomattox, the Southern leaders in Congress, state houses, and police forces looked the same as they did before the war.

Although there were major changes—especially the end of slavery and the passage of constitutional amendments guaranteeing equal protection and universal male voting—the Confederates who returned from the battlefields were largely allowed to rule again. They still owned most of the property and they still wielded deadly force in the South. By the 1870s the old Confederates re-enforced white rule, as they excluded and attacked African-Americans and other supporters of the federal government. Those who demanded fair treatment for vulnerable citizens were slandered, bullied, and sometimes killed. Hundreds of black and white men were lynched by organized mobs in the

second half of the nineteenth century for daring to challenge the color line. Juries regularly acquitted the cold-blooded killers.



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BY GUNDRYMD

Mainstream politicians from the North, including forgettable presidents like Rutherford Hayes and James Garfield, tolerated violent white rule in the South because it promised political stability. They would not win votes in the region, but they would not face a rebellion either. In exchange for regional autonomy, Southern politicians begrudgingly accepted Northern presidents at the end of close, contested elections. Then they did everything they could to curtail presidential power, including de-funding federal law enforcement. The country fell into a long period of frozen division that although peaceful on the surface, embedded systemic violence toward African-Americans, women, and numerous minorities.

This history is at the center of our current troubles. The habits and laws protecting white minority rule are preventing American democracy from pursuing necessary reforms. States remain free to limit voting through old techniques, including difficult-to-reach polling locations, burdensome registration and identification requirements, and increasing harassment of voters. The states have also perfected traditional gerrymandering practices, drawing districts that deny certain groups any chance at representation. The promotion of these techniques, accompanied by baseless claims of “voter fraud,” have worked because they are familiar. Their history gives them legitimacy in many eyes.

Our laws are indeed a central part of the problem because they reflect this history. The Posse Comitatus Act, forced upon President Hayes by Southern politicians in 1878, severely constrains the use of military power at home. The Act has encouraged a strong presumption that federal forces would stay out of disputes over elections. It should not surprise us that although the Pentagon was quick to clear Lafayette Square of demonstrators in June 2020, it was slow to react when violent insurrectionists threatened the certification of the new president.

The certification was vulnerable in the first place because of the Electoral Count Act of 1887—a compromise authored by Democrats and Republicans after a disputed election in 1876, and two very close elections in 1880 and 1884. The Act created a series of convoluted procedures designed to give more power to governors and state legislatures in determining the electoral votes for president. They count the votes of citizens, allocate electors, and then attest to the votes of the electors. Congress retained the ability to object to state electoral ballots, but only with a majority in both houses. The weeks from Election Day to certification are filled with opportunities for various local and state officials to influence the outcome. That was precisely the intention of politicians in the nineteenth century, and it contributed to the extended and violent dispute around the 2020 presidential election, despite the clear victory by Joe Biden.

According to the Fourteenth Amendment, elected officials who encourage the kind of insurrectionary violence witnessed on January 6, 2021 are subject to a permanent ban from office. Immediately after ratification in 1868, however, this law was undermined by blanket pardons granted to former Confederates by President Andrew Johnson. Elected officials who helped violent groups, like the Ku Klux Klan, attack federal institutions were never held accountable.

That precedent surely encouraged some current members of Congress to believe that they could assist efforts to stop the certification of Joe Biden's presidency without penalty. Senator Ted Cruz, for example, invoked the history of Southern white resistance to majority rule when he called on his colleagues to delay the certification of the 2020 presidential election and create a special

commission to investigate the lies about fraud that he and his allies were circulating. He and many others continue to believe that they can serve in elected office and provoke insurrection.

These poisoned inheritances are not small blemishes on American democracy; they are deep scars that imperil the health of the entire republic. They are easy to ignore in highly partisan debates and self-serving efforts to glorify the nation, but they are obvious to anyone who diagnoses our history carefully. We cannot afford to censor the uncomfortable evidence of systematic exclusion and division. We must accept the evidence, recognize the scars, and work to heal. That means changing laws and institutions to increase fairness for all citizens.

Historical reckoning is a necessary medicine for strengthening democracy.

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